

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/12/2019

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WRIT PETITION NO.16620 OF 2017
&
W.M.P.NO.18005 OF 2017

M.Jayaratchagan

... Petitioner

Vs

1. The Principal District Judge
District Court Campus
Krishnagiri 635 001.
2. The District Judge
Fast Track Mahila Court
District Court Campus
Krishnagiri 635 001.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the Order bearing D.No.Nil/2017, dated Nil/6/2017 passed by the first respondent and to quash the same as being illegal, arbitrary and contrary to Articles 14 & 16 of the Constitution of India and for a consequential mandamus to the first respondent to grant the benefit of the order, dated 15/3/2017 to the petitioner by granting the increment of 3% in basic pay.

For petitioner ... Mr.V.Govardhanan
For respondents ... Mr.C.T.Mohan

O R D E R

Subramonium Prasad, J

Instant writ petition is filed, to quash the order passed by the Principal District Judge, District Court Campus, Krishnagiri, first respondent, in D.No.Nil/2017, dated Nil/6//2017, and consequently, direct the first respondent to grant the benefit of the order, dated 15/3/2017, to the petitioner by granting the increment of 3% in basic pay.

2. The petitioner was appointed as Masalchi, by the Chief Judicial Magistrate, Krishnagiri. Government of Tamil Nadu, issued a communication, bearing letter No.48211/Pay Cell/2012-1, dated 9/10/2012, to all the Secretaries to Government, Departments of Secretariat, All Heads of Departments, All Collectors including District Magistrates, the Accountant General (Audit - II), the Accountant General (CAB), Pay & Accounts Officers and all Treasury Officers, stating that as per Rule 10 of the Tamil Nadu Revised scales of Pay Rules, 2009, employees on promotion to higher posts are entitled for the benefit of one increment benefit equal to 3% of the sum of the pay in the pay band and the existing grade pay computed and rounded off to the next multiple of 10 and the same will be added to the existing pay in the pay band. On the same analogy, it is clarified that the employees on promotion to higher posts on identical scales of pay, i.e., in the same pay band and same Grade pay in the revised pay structure are also entitled for the benefit of one increment equal to 3% of Basic pay (Pay + Grade pay) in the lower post. Since the petitioner had successfully completed his probation, he was promoted as Office Assistant, by an order, dated 14/2/2012.

3. By Proceedings bearing R.O.C.No.244/2017, dated 15/3/2017 of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, the Government issued orders and a table showing the existing pay and the revised pay to the petitioner reads as under:-

S. No.	Particulars	Existing pay	Revised pay
1	ADD one increment at 3% on 17/12/2012 for his promotion on the pay Rs.6880/-	6880.00	7090.00
2	Grant annual increment wef 1/10/2013	7090.00	7310.00
3	Grant annual increment wef 1/10/2014	7310.00	7530.00
4	Grant annual increment wef 1/10/2015	7530.00	7760.00
5	Grant annual increment wef 1/10/2016	7760.00	8000.00

4. By the impugned order, dated Nil/6/2017, the excess amount of Rs.23,712/- is to be recovered in 32 monthly instalments. It is this order, which is under challenge in the instant writ petition.

5. Heard Mr.V.Govardhanan, learned counsel for the petitioner and Mr.C.T.Mohan, learned counsel for the respondents.

6. Mr.V.Govardhanan, learned counsel for the petitioner placed reliance on letter No.48211/Pay Cell/2012-1, dated 9/10/2012, issued by the Secretary to Government (Expenditure). Operative portion of the letter reads as under:-

"In the reference cited, a clarification has been sought for on the mode of fixation of pay in respect of employees promoted to higher posts on identical scales of pay i.e., in the same pay band and Grade pay in the revised pay structure on or after 1/1/2006.

2. In this connection, it may be stated that as per Rule 10 of the Tamil Nadu Revised Scales of Pay Rules, 2009, employees on promotion to higher posts are entitled for the benefit of one increment benefit equal to 3% of the sum of the pay in the pay band and the existing grade pay computed and rounded off to the next multiple of 10 and the same will be added to the existing pay in the pay band. On the same analogy, it is clarified that the employees on promotion to higher posts on identical scales of pay i.e., in the same pay band and same Grade pay in the revised pay structure are also entitled for the benefit of one increment equal to 3% of Basic pay (Pay + Grade pay) in the lower post."

7. The petitioner has been promoted as Office Assistant, by Proceeding dated 14/12/2012. Petitioner is therefore, entitled to the benefits, as stipulated in the order, referred to supra.

8. Government has filed a counter, stating that order by which the petitioner has been promoted has passed wrongly and in fact, the petitioner is only being promoted as Office Assistant to the Sessions Judge, Fast Track Mahila Court, Krishnagiri, on 11/2/2015. When a pointed question was asked as to whether the petitioner was given a hearing or was any sought of hearing held before the impugned order was passed, learned counsel for the respondents was very fairly submitted that no enquiry was conducted.

9. It is well settled that administrative order has civil consequences can be passed only after giving opportunity to the person against whom the order is passed to explain the position. The Hon'ble Supreme Court, in Canara Bank Vs. Debasis Das {(2003) 4 SCC 557}, has observed as under:-

"19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

10. In view of the above, writ petition is allowed and the impugned order, dated Ni./6/2017, passed in D.No.Nil./2017, by the Principal District Judge, is set aside. Principal District Judge, District Court Campus, Krishnagiri, first respondent is directed to give an opportunity to the petitioner to give his explanation and then pass orders, refixing/withdrawing the pay scale fixed by proceeding, dated 15/3/2017. No costs. Consequently, the connected W.M.P.No.18007 of 2017 is closed.

Sd/-
Assistant Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

mvs.
To

1. The Principal District Judge
District Court Campus, Krishnagiri 635 001.
2. The District Judge
Fast Track Mahila Court, District Court Campus
Krishnagiri 635 001.

+1cc to M/s.Row & Reddy, Advocate, S.R.No.100322

W.P.No.16620 of 2017

NMI (CO)
CS/02/01/2020